SUPREME COURT OF THE UNITED STATES

**OCTOBER TERM, 1940**

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# No. 587

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SAMUEL R. TOUCEY,

*Petitioner,*

*vs.*

NEW YORK LIFE INSURANCE COMPANY.

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ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

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## BRIEF FOR PETITIONER.

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SAMUEL R. TOUCEY, *Petitioner,*

*vs.*

NEW YORK LIFE INSURANCE COMPANY, *Respondent.*

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## BRIEF IN ARGUMENT BEFORE SUPREME COURT OF THE UNITED STATES.

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*To the Honorable the Chief Justice, and Associate Justices of the Supreme Court of the United States:*

Having hoped to appear before this Honorable Court in oral argument and so invited have been unable to so appear.

My opening comment is a necessary prelude to what can be properly termed a Federal judiciary legal imbroglio and the underlying conditions which caused it. Without fear facts will be stated, in fact already have been, and if I have been derelict in my duty as a citizen to State or Nation it is for this Honorable Court to decide. Likewise any and all individuals involved have a right to appear and defend their action.

The case is one readily adjustible since the dispute was a reality. It required the honest cooperation of the two interested parties. A small effort.

Your petitioner finally filed suit in equity in Missouri State Court charging defendant "fraud" in the analysis of policy Number 8 611 895 to determine its disability clause, year 1934 and from the actual policy itself, suit in equity filed October, 1935. It never was nor never has been a question of your petitioner knowing the correct interpretation of this policy's disability clause. It has always been a question of defendant advising your petitioner terms of policy.

Suit in equity was transferred from Missouri State to Federal court and went to trial November 18th, 1936, trial lasting four full days until after five o'clock P. M. November 23rd, 1936, when Federal court rendered its decision. To walk across the street, therefore, from Missouri State to Federal court this defendant consumed one year and one month.

The defendant opened his Federal court argument at start of trial that your petitioner entered Federal court with "unclean" hands.

No appeal was taken from Federal court decision rendered November 23rd, 1936.

Suit was refiled by your petitioner in Missouri State Court, December 28th, 1937, docketed and finally set for trial.

In March, 1938, when the State court was to try suit Federal court of 1936 enters temporary injunction stopping State court trial.

Fortunately for petitioner Federal court wrote an opinion justifying Federal court injected injunction.

Appeal was taken on Federal court temporary injunction, March, 1938.

On February 24th, 1939, Circuit Court of Appeals Eighth Circuit rendered decision concurring in Federal court temporary injunction.

Petition for writ of certiorari was made to the Supreme Court of the United States. Supreme Court rejected writ.

On August 14th, 1939, Federal court entered permanent injunction and also court's final decree under which Marshal was to obtain from petitioner New York Life policy No. 8 611 895 with component parts, physically if necessary, and destroy policy.

Appeal immediately taken, granted by Circuit Court of Appeals Eighth Circuit.

On June 29th, 1940, Circuit Court of Appeals Eighth Circuit declined to write an opinion simply saying the first opinion (rendered February 24th, 1939) was "all right".

Petition for rehearing made, granted, but on July 22nd, 1940, Eighth Circuit Court of Appeals entered order denying rehearing, mandate to issue to Federal court August 2nd, 1940.

On July 24th, 1940, by letter, petitioner's attorneys withdrew from case. (See page #8 printed copy writ of certiorari.)

Your petitioner here charges this defendant stands here today before this Honorable Court with "unclean" hands. Defendant has had since morning of November 18th, 1936, to prove that charge against your petitioner. Your petitioner was ready to prove his charge against defendant within ten days following close of Federal court trial, November 23rd, 1936.

Federal court denied motion for rehearing, supported by affidavit witness would testify subpoenaed to testify at trial, setting out why witness did not testify at trial and also that defendant interferred with Federal court subpoenaed witness during session of trial, that knowledge of witness was on the suit in equity "fraud" by defendant, year 1934.

Petitioner calls this Honorable Court's attention to the fact when the Supreme Court rejected petition for writ of

certiorari on temporary injunction on first appeal, Brief of respondent in opposition to writ of certiorari prominently stated at opening that petitioner on December 28th, 1937, refiled suit of 1935 back in State of Missouri Court claiming that one, James Shay, was assignee of New York Life policy No. 8 611 895, and that your petitioner waited almost two years after November 23rd, 1936, to again appear before the Federal judiciary or any court.

This Honorable Court is aware that it permitted your petitioner to file petition for writ of certiorari in argument here today and that such petition for writ of certiorari was filed by petitioner November 9th, 1940.

On November 9th, 1940, your petitioner obtained service on defendant and filed copy of petition for writ of certiorari with defendant also on same date and submitted service thus obtained on defendant to Supreme Court.

That in petitioner's amendment to writ of certiorari thus filed November 9th, 1940 (pages 17 to 53 printed copy of writ), on page #28, last paragraph appears indisputable evidence existing proving on November 23rd, 1936, date Federal court rendered decision the New York Life directorate received from petitioner a much more serious charge than "unclean" hands against two officers of defendant in character of their Federal court testimony, pointing out to this same directorate if said two officers, together with still a third defendant officer who also testified at trial but disinterested and not a party to the charge made were put together, petitioner sent for this disinterested officer alone could prove the charge made by petitioner against its two officers. This refutes the defendant statement petitioner was silent until December 28th, 1937, almost two long years.

This evidence pointed to on page #28 printed copy of writ for certiorari is definite proof what your petitioner

was doing from November 23rd, 1936, to December 28th, 1937. Of course, this defendant knew it.

On September 3rd, 1937, in same evidence is to be found a personally signed letter to petitioner by a New York Life director inviting petitioner to take the charge to the courts.

To prove such a serious charge so readily provable from and by defendant official is quite another matter. If I did not, however, take it to the courts as invited by this director, I have taken it to the Federal government and intend to prove it there also.

As soon as I could engage attorneys, on December 28th, 1937, I re-filed suit in Missouri State Court as thus invited.

This defendant had no intention of going to trial in any court notwithstanding its director's request on me dated September 3rd, 1937.

March, 1938, on the very last day perhaps before going to trial in State of Missouri Court, jury all but climbing into jury box, was met by Federal court of 1936, who, by the power of Federal court temporary injunction stopped State court jury trial. This defendant there had a petition perhaps fifty pages long to influence the Federal court of 1936 to do plainly what the Constitution did not intend and never did so intend.

Your petitioner states here not a single one controlling precedent case was cited in this defendant's fifty page petition, nor has been cited by this defendant in any and all petitions, briefs, etc., it has prepared since in this long litigation which clearly justified the Federal court to enter any such Federal court temporary injunction.

The finality is to be enacted here today by this Honorable Court.

Before I get into the argument on the transcript of record of trial, my life time record as a citizen of Missouri and the nation had to stand bare when I undertook to obtain justice through the courts. I had grown to know this defendant.

When your petitioner filed suit in equity in State of Missouri Court, October, 1935, it mattered little to petitioner if a Missouri court or Federal court tried the case. Petitioner had the fullest confidence in both. This this Honorable Court appreciates.

Buying my first insurance policy in 1905 to protect my family, not myself, I developed into a potential buyer of insurance. For personal protection alone from 1905 perhaps I was medically examined and bought insurance policies in 20 different insurance companies.

This defendant is the only one of this volume of insurance companies with whom I ever had a dispute and with whom I ever filed a claim under its policy.

This defendant also has a life time record. It is not an enviable one. If this defendant spent as much time and money purifying it as it does to make it worse its policy holders might, in the end, have some hope. From my experience they have none now. It is all very well for a colossal insurance Goliath Corporation to advertise to the public what they pay back to policy holders. With its size it must. My purpose will always be from now on to force them to advertise by law what they collect and do not pay back to policy holders and what they spend to prevent having to do so by law. Also why they advertise their directorate to protect policy holders. Invite policy holders to write them freely for protection, etc.

Let your petitioner here assure your Honorable Court no publicity has occurred from his source on the issues in this litigation to date, no criticism directed against any court or any court decision so far rendered.

It would be impossible for petitioner to know wherein the fault lies under which Federal court would try this suit in equity, rule no defendant "fraud" year 1934, and from Federal court's own written opinion in entering injunction to stop State court jury trial (March, 1938) admit "Higher

court might well overrule its decision on 'FRAUD', but nevertheless at the same time affirm decision on DISABILITY."

Federal court rendered decision said—quote

> "I find the fact to be that the defendant did not in any manner or by any means conceal from the plaintiff that the $50,000.00 contract or policy of insurance did contain a provision for indemnity against total and permanent disability; *On the Contrary,* the defendant advised the plaintiff that it contained such a provision" End quote.

Appellant entered a serious charge to Justice Department against two officers of the New York Life for character of their testimony at Federal court trial as set out page #28 of printed writ of certiorari, last paragraph, who denied they took possession of policy No. 8 611 895 June 29th, 1934, to analyze from actual policy and advise petitioner if policy did contain provision for indemnity against total and permanent disability.

The Federal court is definitely in error here in its rendered decision.

Nor has your petitioner attempted to fathom why the Eighth Circuit Court of Appeals likewise is in error on decision it rendered February 24th, 1939, concurring with Federal court injunctions and court's final decree.

If the Federal court was in error in decision rendered "ON THE CONTRARY, the defendant advised the plaintiff that policy contained such a provision" the Federal court was again definitely in error in decision in saying "Was presumed to know terms of his policy".

Your petitioner has purchased many government bonds through the banks. By writing the bank advising what bond is desired, the bank replying giving terms of bond petitioner then bought and paid for, where does "law" come in if the bond is a counterfeit or spurious bond?

What's the difference on the terms of an insurance policy?

As I understand the Constitutional amendment permitting a corporation to first become an "individual" and as such transfer a State citizen who filed suit in his own State court from State to Federal court, such transfer was never intended under the Constitution for a Goliath Insurance Corporation to exploit the State citizen by obtaining a Federal court decision he was not entitled to under the Constitution.

As I understand it 137 different insurance companies transferred thousands of Missouri insurance policy holders from Missouri State to Federal court and a three judge Federal court rendered decision giving to the 137 different insurance companies ten to 12 millions of dollars belonging to Missouri Insurance policy holders. The three judge Federal court was deceived, of course.

But one of the three judge Federal court was my 1936 Federal court and one of the three judge Federal court was a member of the Circuit Court of Appeals Eighth Circuit. At same time I was one of the 137 different insurance companies' policy holder.

At the same time this defendant deceived the same two Federal courts on your petitioner's policy No. 8 611 895 and three additional policies.

Your petitioner has no confidence in this Goliath Insurance Corporation's honesty and believes when he concludes here your Honorable Court won't either.

Your petitioner's printed petition for writ of certiorari necessarily admits discussion of this case with Federal government branches, but beyond this petitioner has not discussed the case, the exception, of course, being his attorneys. None have any knowledge of my action since July 24th, 1940.

Memorandum on application for temporary injunction, opinion entered by federal court: Quoted in excerpt. In full appearing page #83 printed copy petition for writ of certiorari:

"Had there been an appeal the Circuit Court of Appeals would have heard the case de novo".

"It might well have disagreed with our finding of *Fact No. 1* and nevertheless affirmed the decree because of finding of *Fact No. 2*".

"Certainly the decision of an issue which might be the sole basis for affirmance of a decree is a decision arising to the dignity of res adjudicata".

*Fact No. 1 was defendant "fraud" charged in petition of suit in equity, year 1934. Federal Court decision, no "fraud".*

*Fact No. 2 was federal court decision on disability under disability clause in policy No. 8 611 895.*

By the Provisions of Section 379, U. S. C. A., Title 28, Section 265, Judicial Code, a Federal Court May Not Stay Proceedings in a State Court where Those Proceedings are In Personam.

It is clear that the original action in equity to avoid the reduction in amount of the policy and to procure a reinstatement of that policy was an action *In Personam.*

It is clear that the action at law in the State Court brought by petitioner's assignee upon the policy to recover disability benefits was also an action *In Personam.*

Petitioner concedes that, by judicial interpretation, it is well established that in spite of the provisions of Section 379, U. S. C. A. Title 28, a federal court which first requires jurisdiction of a "res" may enjoin subsequent proceedings in a state court involving the same "res". That rule, however, is limited to actions which involve "res". Where an action, as here, is *In Personam*, in which nothing more than a personal judgment is sought, there is and can be no objection to a subsequent action either before or after judgment, and this

because the subsequent action neither "ousts" the jurisdiction of the court in which the action was first brought nor does it delay or obstruct the exercise of that jurisdiction nor lead to a conflict of authority where each court acts in accordance to law and where the actions, As HERE, are *In Personam.*

A judgment rendered in one court, or one of the courts, may be pleaded in another and the effect of the judgment is to be determined by the application of the principles of "res" adjudicata by the court in which the action is still pending, in the ordinary exercise of its jurisdiction, as it would determine any other question of fact or law.

The court, having determined the equitable issues in the original equity proceedings (Fact No. 1) adversely to your petitioner, LOST JURISDICTION TO DETERMINE THE LEGAL ISSUES OF DISABILITY (Fact No. 2).

The original petition in equity counted upon "FRAUD" (Committed June 29th, 1934) in the procurement of the reduction in amount of, and lapse of policy.

Cashier Shellhorn and his assistant, Mr. Wells carried on negotiations with petitioner, Mr. Wells being an occasional caller at petitioner's office, making his last office call on petitioner June 29th, 1934, taking possession of New York Life policies.

A complete stranger to appellant was used by defendant in late July, 1934 (their Mr. M. M. McKinney, see letter July 25th, 1934, page #68), to obtain reduction in policy No. 8 611 895 and cash surrender values on three additional policies.

Whether your petitioner might have had a Judgment in that case did not depend upon *Proof* by him of *Total Disability* for, upon *Proof* of *"Fraud"* in the procurement of the lapse of the policy, petitioner would have been entitled to a decree of reinstatement in the original amount (or reduced amount) conditioned upon payment of premiums, regardless of *Disability.*

The Federal court opinion, therefore, entered to justify Federal court temporary injunction stopping Missouri State Court trial (March, 1938) quoted on page #5 was before the Circuit Court of Appeals, Eighth Circuit, on appeal of temporary injunction.

Glaringly this Federal court opinion points to Two Facts.

> Fact One. The Federal court apparently believed had decision been appealed the higher court would overrule—that "Fraud" was committed by defendant as charged in petition for suit in equity, defendant "Fraud" year 1934.
>
> Fact No. 2. Disability under disability clause in defendant policy No. 8 611 895: The federal court apparently believed had decision been appealed (joint decision on "Fraud" and "Disability", that higher court would have affirmed its decision due to findings on *Disability*.

Defendant "Fraud" was, therefore, not important to the Federal court. No wonder your petitioner was denied the right by Federal court to convince the court on "Fraud".

The Federal court never had a legal right to pass on the issue of *Disability* under policy No. 8 611 895; nor a legal right to enter temporary injunction and subsequent injunction and court's final decree.

On February 24th, 1939, Circuit Court of Appeals, Eighth Circuit, rendered decision concurring with Federal court's decision. Your petitioner desires to quote below excerpts from this decision: Quote:

> "But he alleged "That he did not know his rights under his policy and the coverage thereof" and in July, 1934, before he had reached the age of sixty years and while the premiums on the policy were fully paid up, he called upon the company "to advise him as to the coverage of the policy". That the insurance company, although it well knew of his then existing total disability and his rights to the monthly payments and

waiver of further premiums, fraudulently and intentionally failed to advise him of his rights under the policy and fraudently induced him to thereafter make a premium payment upon the reduced policy. He alleged that in September, 1935, he was advised by a medical examiner that his policy covered disability benefits for disease and he promptly made demands upon the company for reinstatement of his original policy and for payment of benefits in accordance therewith. He prayed the court to reinstate the original policy and to award recovery for disability benefits provided therein".

In deciding the case, the court said—still quoting

"I say that the plaintiff has made a most favorable impression on me. He is a man of capacity and integrity and of high standing, and I believe his testimony fully "as to the nature of his malady, but because I do believe him to be a man of great ability intellectually, and of much experience in the business world, I cannot believe and do not believe that within the meaning of this contract of insurance that we have here, the $50,000.00 policy, I do not believe that he is so disabled by his malady and disease as that he is prevented thereby from engaging in any occupation whatsoever for remuneration or profit. In the light of all of the other testimony in this case, of all the medical testimony, I think it is possible to come to the conclusion that this plaintiff is so TOTALLY AND PERMANENTLY DISABLED. I can understand his viewpoint. I can understand what I think is the viewpoint of his learned counsel. HE CERTAINLY IS TOTALLY DISABLED, I would think, from carrying on the same kind of a business enterprise as that upon which he was engaged and at which he was very successful. HE CANNOT DO THAT OR ANYTHING OF THAT CHARACTER, but it is an incorrect interpretation of this contract to conclude that if he CANNOT DO WHAT HE DID DO HERETOFORE, he is totally disabled within the meaning of this contract".

Still quoting from Federal court decision:

"The court also found that the insurance company had not in any manner or by any means concealed the fact that the policy contained the provision for indemnity against total and permanent disability from Mr. Toucey, but ON THE CONTRARY, the Company advised him that it contained such provision, and 'upon the facts and circumstances shown' Mr. Toucey was conclusively presumed to know the provisions of his policy. The court also found generally that Mr. Toucey was not entitled to the relief prayed for and dismissed the bill with prejudice at plaintiff's cost."

Continuing quoting Circuit Court of Appeals decision:

"But it was not alleged or claimed in Mr. Toucey's equity bill in the federal court that Mr. Toucey then held any policy which disclosed on its face an obligation of the insurance company to pay him his disability benefits of $500.00 per month. On the contrary, the verified bill of Mr. Toucey presented that the policy on which he was relying and which had previously existed, had been first altered and reduced and then had been cancelled for lapse, so that he could not have any recovery upon it at law. His petition to the equity court was to reinstate the whole original policy with all of its life insurance and other benefits. The grounds without which he could not have stated a case for reformation and reinstatement of his policy were the alleged total and permanent disability occurring in April, 1933, exempting him from premium payments after that date and the alleged fraud of the insurance company.

"Insofar as Mr. Toucey's prayer for recovery for his disability payments may be regarded as a dependent legal claim, it was a claim dependent upon Mr. Toucey's establishing his right to reinstatement of his entire policy. That right in turn was dependent upon proving the disability occasioning premium waiver and

also upon the alleged fraud of the insurance company in respect to said disability. Unless and until the equity court had before it evidence to justify it in finding both the disability and the fraud relating thereto, it could not award judgment on the disability provisions of the policy. But both of those claims were asserted and in controversy before it and the court in equity was called upon to decide upon both controversies. It did consider the evidence on both issues and we are cited to no implying case that a court of equity lacks power to fully and finally adjudicate all equitable controversies presented by the pleadings and the evidence in a case within its jurisdiction. Its adjudication on each claim in controversy was equally conclusive and binding upon Mr. Toucey.

"After that final adjudication had been made and decree entered, a law case for recovery of disability benefits has been ingeniously made out on the face of a petition in the state court by simply omitting the facts as they were established between the parties in the federal court equity suit. The pleader has omitted to show that Mr. Toucey made application to the insurance company for reduction of his policy and that pursuant to that application the alteration and reduction of the policy as to premiums and benefits was made and that he had recognized the change in the contract by making a payment of premium at the reduced premium rate. The hope of the plaintiff in the law case manifestly is to frame the pleadings so as to assert a claim of 'FRAUD' against the company in a subsequent pleading."

Your petitioner's object has been attained by quoting this much of the Circuit Court of Appeals, Eighth Circuit's opinion rendered February 24th, 1939, concurring with Federal court.

The action was *In Personam*. Petitioner had a legal right under the Constitution and laws thereunder to file suit at law in State of Missouri court, December 28th, 1937, and the Federal court had no legal right under the Consti-

tution and laws thereunder to enter temporary injunction stopping State court jury trial.

No controlling precedent case is cited by defendant, Federal court or Circuit Court of Appeals, Eighth Circuit, to justify their decisions.

Petitioner cites several controlling precedent cases to prove both lower courts had no such right as held out in decisions rendered.

Three defendant policies were cashed in for their cash values and policy No. 8 611 895 reduced in amount due to defendant "fraud" June 29th, 1934. An entirely strange official in defendant company and whom petitioner did not know when he entered his office late in July, 1934, to cash the policies in and reduce one in amount. This official did not have the policies, knew nothing about my disability, knew nothing about the defendant policy analysis on petitioner's request June 29th, 1934, to advise petitioner from actual policies policy terms.

This defendant official (Mr. M. M. McKinney, page #42, second paragraph, and page #68, last paragraph, printed copy writ of certiorari) so testified in Federal court trial. So did petitioner.

Yet the Circuit Court of Appeals decision states your petitioner undertook to frame insurance company on law suit, ingeniously make out of the face of the petition in equity a law suit, to quote "the hope of the plaintiff in the law case manifestly is to 'frame' the pleadings so as to assert a claim of fraud against the company in the subsequent pleadings".

The Federal court decision states on "FRAUD" "The higher court might well overrule decision on Fact No. 1; but nevertheless affirm decision on Fact No. 2".

The Circuit Court of Appeals decision states petitioner was trying to "frame" the insurance company and make a case of "fraud" against them.

Neither the Federal court decision or Circuit Court of Appeals decision mention or recognize why petitioner could not appeal Federal court's decision rendered November 23rd, 1936. This decision could not be appealed by petitioner due to the Federal court subpoenaing official hospital report, hospital ignoring served Federal court subpoena, hospital report not getting in record of Federal court trial so could be used on appeal. Hospital report was evidence on *disability clause* in policy No. 8 611 895. (See pages 43, 44 and 45, printed copy petition for writ of certiorari—amendment.)

The Circuit Court of Appeals Eighth Circuit necessarily would be guided by the Federal trial court; but even so the Federal court decision was not on appeal, but the Federal court temporary injunction, permanent injunction and court's final decree were on appeal to Circuit Court of Appeals and the action was clearly *in persona*. The Circuit Court of Appeals was in error in not correcting trial court.

The Supreme Court of the United States rendered decision January 29th, 1940, which your petitioner here quotes in excerpt. It is pertinent to the disability decision rendered in this above case: *Federal Court disagreed with Missouri State law.*

*Carpenter* v. *Wabash Ry. Company, et al.*, 309 U. S. 23, No. 230. (1, 2).

> "For the present purposes, we may assume, without deciding, that the determination of the court below was (27) correct upon the record before it and in the light of the law as it then stood. But it is our duty to consider the amended statute and to decide the question in harmony with its provisions, if found to be applicable. The controlling rule was thus stated by Chief Justice Marshall in United States *v.* Schooner Peggy, 1 Cranch, 103, 110, 2 L. Ed. 49: "It is the general truth that the province of appellate court is only to inquire whether a judgment when rendered was erroneous or not. But if,

> subsequent to the judgment, and before the decision of the appellate court, a law intervenes and positively changes the rule which governs, the law must be obeyed, or its obligation denied. * * * In such a case the court must decide according to existing laws, and if it be necessary to set aside a judgment, rightful when rendered, but which cannot be affirmed but in violation of law, the judgment must be set aside"

Early in year 1938, in the commonly known Erie case, the Supreme Court of the United States rendered decision—quote

> "No Federal court ever had a right at any time to disagree with State established law on disability, etc".

The Federal court decision rendered November 23rd., 1936, disagreed with *Missouri State established law on insurance policy disability clause*. This was defendant policy No. 8 611 895.

On February 24th, 1939, the Circuit Court of Appeals Eighth Circuit concurs in Federal court decision and disagreement with Missouri State established law on *disability*. By decision.

By the same decision the Circuit Court of Appeals Eighth Circuit contends the issue of disability, even though the law suit in State court was *in persona*, the Federal court had a right to enter temporary injunction stopping State court jury trial (March, 1938) because of the issue of disability. In fact because the Federal court, in rendering decision on "FRAUD" year 1934 as charged in petition in suit in equity first filed in Missouri State Court, October, 1935, also included in its rendered decision the issue of disability (which Federal court never had a legal right so to do) because Federal court did include the issue of disability in decision rendered November 23rd., 1936, Federal court had a "right" to enter temporary injunction stopping State court jury trial, March, 1938.

On petitioner's later appeal to Circuit Court of Appeals Eighth Circuit because Federal court entered permanent injunction and court's final decree (August 14th, 1939) the Circuit Court of Appeals Eighth Circuit declines to write an opinion, simply saying its first opinion (February 24th, 1939) was "ALL RIGHT" It was, of course, for defendant.

Your petitioner here quotes, in excerpt, decision rendered by the Supreme Court of the State of California simply to show a correct interpretation of the Constitution.

If American Democracy, of which we hear so much today as to whether it will survive, also the Constitution, is to survive, what the martyred Justice Cardozo once said will preserve both, if followed. (Page #51 writ of certiorari-amendment) Quote

> "It is the duty of a judge to objectify in law, not the Judge's own convictions, ambitions and philosophies, but the convictions, ambitions and philosophies of the spirit of his time."

The Supreme Court of California said—

*Clockman* vs. *Life Insurance Company.*

> "Where a policy holder has approached his insurer with a request for advice concerning his rights under the policy, if the agent of the insurer undertakes to advise, at least it should be the duty of such representative to make no false or misleading statement in that respect.
>
> "Ordinarily a policy holder who does not read his policy cannot complain if he loses out on some of the benefits which it offers. When the representative of the insurance company affirmatively misinforms him on the contents of the policy, he is excused for failing to read it and if he has surrendered it, relying on these false representations, the policy will be reinstated". End quote.

Petitioner made amendment to petition for writ of certiorari (Pages 17 to 53) filed November 9th, 1940, with the Supreme Court.

Circuit Court of Appeals Eighth Circuit entered order July 22nd., 1940, mandate would issue to Federal court August 2nd., 1940.

Federal court's final decree entered August 14th, 1939, thus would be enforced August 2nd, 1940. Marshal would take away from petitioner defendant policy No. 8 611 895 and component parts and destroy, "the law" August 2nd, 1940.

Defendant obtained petitioner's medical examination November 13th, 1923, by "fraud".

Defendant issued policy No. 8 611 895 against this November 13th, 1923, medical examination by "fraud".

Defendant's Home Office with policy No. 8 611 895 on its front page going into force and effect January 2nd, 1924, by pen and ink notation on back page of policy put policy into force and effect June 4th, 1924, and left front page as originally issued and to deceive petitioner. Policy No. 8 611 895, therefore, was put into force and effect June 4th, 1924, on a medical examination made November 13th, 1923, and even then this medical examination was obtained by "fraud". No re-examination made by defendant as to petitioner's physical condition, a period of more than eight months.

Petitioner intends to prove to this Honorable Court before conclusion this defendant did not care anything about all that back in 1923 and 1924. If it cared anything about it all as late as November, 1923, when testifying concerning policy No. 8 611 895 in Federal court the record is proof. Defendant must know when it issues a policy and why. If its Home Office changes both terms and date effective of original policy and why.

Policy No. 8 611 895 was, when writ of certiorari filed November 9th, 1940, with Supreme Court, needed for evi-

dence before two bodies other than Federal judiciary. (See page 24, last paragraph and page 28, last paragraph writ of certiorari-amendment).

The Federal court decision rendered November 23rd, 1936, found that petitioner did write, sign, stamp and mail two letters to defendant Home Office June 29th, 1934, and August 11th, 1934.

The Federal court said in decision while not passing on the issue of fact as to whether the plaintiff mailed the letters described in evidence, the court had no reason to doubt that the letters were mailed, etc. (See page 4, last paragraph, page #5 printed copy writ of certiorari-amendment.)

*The Suit in Equity Charged "Fraud" Year 1934.*

Transcript of record in case mentions defendant letters to petitioner dated July 25th, 1924, and August 10th, 1934. (See pages 68, 69 and 70 printed copy of writ of certiorari-amendment.) Defendant letters signed by their official, Mr. M. M. McKinney.

Transcript of record mentions petitioner's letter to defendant's Home office dated August 11th, 1934, enclosing copies of defendant's Kansas City Branch office letters signed M. M. McKinney dated July 25th, 1934, and August 10th, 1934. (See page #72 copy of writ of certiorari-amendment.)

Petitioner testified in Federal court trial defendant's official (M. M. McKinney) requested petitioner to write his August 11th, 1934, letter to Home Office direct.

Defendant's official, M. M. McKinney testified at Federal court trial and did not deny petitioner's testimony.

Petitioner wrote letter to defendant's Home Office also dated June 29th, 1934. (See page #67 copy of writ of certiorari-amendment.)

Petitioner testified in Federal court Veterans Administration requested petitioner to write defendant's Home office such letter on June 28th, 1934. (See page #25, last paragraph copy of writ of certiorari-amendment.)

Veterans Administration testified at Federal court trial and corroborated petitioner's testimony.

The Federal court, to decide the charge of "FRAUD" in petition in suit in equity, year 1934, was forced to pass on petitioner's two letters to defendant Home Office dated June 29th, 1934, and August 11th, 1934.

Yet Federal court decision states Federal court did not pass on this issue of these two letters, but court was convinced petitioner wrote, signed, stamped and mailed such letters.

Is it any wonder Federal court, by written opinion, when entering temporary injunction to stop Missouri State Court jury trial, March, 1938, said—

> "Had decision been appealed, higher court might well have over-ruled decision on "FRAUD" but nevertheless affirmed decision on disability."

Some court will necessarily have to decide, and by law, if your petitioner did write, sign, stamp and mail his letter dated June 29th, 1934, to defendant's Home Office, also his letter dated August 11th, 1934, to defendant's Home Office.

This won't be hard to do. The Veterans Administration's records prove petitioner did write such letter June 29th, 1934, and this defendant's Home Office took action on said letter.

There is still another action this defendant's Home Office took on petitioner's letter to them dated June 29th, 1934.

It withheld from the Veterans Administration the defendant's Home Office three day medical examination on petitioner made late in 1932 on petitioner's request. (See

pages 27 and 28 copy writ of certiorari-amendment.) Veterans Administration's records prove this also.

This defendant's three day 1932 medical examination disabled your petitioner. This is readily proven from petitioner's medical history. Why? There was no issue in 1932 medical examination as to whether policy No. 8 611 895 contained terms of a health provision. Petitioner has a right to believe had this defendant's Home Office in 1932, following its three day medical examination, advised petitioner his true physical condition, petitioner might have filed claim under policy No. 8 611 895 for disability benefits in 1932. Withholding from petitioner his true medical condition in 1932 defendant cause petitioner's emergency operation for stomach ulcers, April 1st, 1933, Chicago, only to use the ethical hotel surgeon who performed the operation as defendant's star medical witness at Federal court trial, November, 1936. (Again see pages 27 and 28 copy of writ of certiorari-amendment. Make correction therein here. Page #27 last paragraph, reads "nothing wrong yet 40 pounds in weight. Should read "forty pounds light in weight".)

As stated to this Honorable Court at outset here, page one, fifth paragraph, it never has been the issue in this legal imbroglio knowing the correct terms and interpretation of policy No. 8 611 895's disability clause.

What good would it have done petitioner to have known it if he did not?

The Federal court of 1936, and the Circuit Court of Appeals Eighth Circuit both render decisions (November 23rd, 1936 and February 24th, 1939) and the Federal court disagrees with Missouri State established law on insurance policy disability clause. The Circuit Court of Appeals Eighth Circuit rules, and takes a full year to do so, the Federal court's decision was "all right".

The conspicuous thing about the Circuit Court of Appeals decision, Eighth Circuit, is, your petitioner actually was "framing" a case on "FRAUD" against this defendant and the only reason petitioner could so "Frame" defendant was because the Federal court had passed on issue of disability in policy No. 8 611 895 where under well established constitutional law the Federal court never had any such right to determine the issue of disability.

The Federal court's duty here was to determine the charge of "FRAUD" in petition in suit in equity, "FRAUD" charged year 1934.

So far as petitioner being disabled was concerned, the New York Life medical examination for three days in 1932 disabled him. That was proven also in Federal court trial and can be readily proven today.

Here is a Federal court and its higher court, Circuit Court of Appeals Eighth Circuit both agreed on the interpretation of defendant's policy No. 8 611 895 disability clause.

Notwithstanding the numerous State court judges from all parts of Missouri held a convention, so to speak, back in 1926 and all agreed that, if an insurance policy holder came into court and proved that he was disabled, permanently and totally so, "FOR HIS REGULAR LINE OF WORK" that constituted insurance corporation's responsibility to be required by law to pay policy disability benefits. All dishonest insurance corporation so called "ambiguous" insurance policy clauses notwithstanding from 1926, Missouri State Established Law on disability, all Missouri judges agreed.

Let me ask this Honorable Court how a policy holder in Missouri could possibly interpret the disability policy clause in his policy if he sat up nights to try?

Here is your petitioner dragged from Missouri State Court in petition in suit in equity, "FRAUD" by defendant,

1934, and one year and one month consumed to walk across the street from State to Federal court, dragged there from Missouri State Court by this defendant for trial. Missouri judges agreed on the disability policy clauses not competent to try such suit.

Only for the same Federal court of 1936 to enter Federal court temporary injunction (March, 1938) stopping second attempt to try same suit in a Missouri State Court.

Ever since (March, 1938) the Federal judiciary has been on trial, not this defendant. Under the Federal judiciary rules and regulations I am not permitted to talk about what happened at Federal court trial of November, 1936, because I did not appeal Federal court decision.

The Federal court states itself in its own opinion why I did not appeal decision of November, 1936. "Fact No. One" and "Fact Number Two". See page five of this petition.

This Federal court fully appreciated back in 1936 the Supreme Court of the United States had not ruled on "*State Established Law on Disability*", in fact its written opinion clearly says so. It so lurks by inference.

Had I appealed Federal court November 23rd, 1936, decision, the Supreme Court of the United States necessarily would go into the entire case, testimony, evidence and all.

There was an official hospital report on me as a patient dated February 1st, 1936, and the Federal court issued its subpoena on this hospital, subpoena was served on this hospital morning of November 18th, 1936, when Federal trial opened demanding hospital to produce this official hospital report on me as a patient before Federal court trial as evidence.

This hospital ignored Federal court's issued and served subpoena on it. (See pages 43, 44 and 45, copy of writ of certiorari-amendment.)

The decision written by the Circuit Court of Appeals Eighth Circuit finding petitioner was trying to "frame" this defendant on the issue of "*Fraud*" and because the Federal court decision also ruled on issue of *Disability* was grossly in error.

This defendant was not only trying to "frame" the Federal court and did succeed in "framing" both the Federal court and the Circuit Court of Appeals Eighth Circuit.

Someone was trying to "frame" the United States Supreme Court by an appeal on Federal court's decision rendered November 23rd, 1936, knowing official hospital report on your petitioner, even though subpoenaed, did not get into record of trial so as could be used on appeal.

I have never charged that this defendant was a party to withholding this hospital report from Federal court evidence. I have so handled my investigation if this defendant was guilty of any part in this, this defendant would prove it to somebody else besides me in the final analysis.

I have charged and do charge here to this Honorable court this defendant did interfere with one of petitioner's Federal court subpoenaed witnesses and during session of trial. (See pages 15 and 16 copy of writ of certiorari-amendment.)

If the Federal court denied motion for rehearing and supported by affidavit this Federal court witness, if rehearing granted, would testify before Federal court as affidavit set-out, your petitioner could do nothing about it all in 1936.

This witness refused to make affidavit after Federal court denied motion for rehearing and properly so. He was himself an insurance executive in competition with this defendant.

But this witness did testify before the Federal grand jury *July 17th, 1940*, as to his knowledge and exactly as the signed affidavit before Federal court to support request for

rehearing set out. This witnesses knowledge was on "FRAUD" charged in petition in suit in equity, year 1934.

Witness believed that I was disabled as early as September, 1933, and at that time requested I give him defendant policies to analyze to see if policies contained a health provision. This I declined to do, advising if I ever wanted policies analyzed for health provision I would so request the defendant and so testified at Federal court trial, November, 1936.

Your petitioner assures this Honorable Court there is most positive proof and evidence existing year petitioner as early as 1932, positively so following operation April 1st, 1933, was "Permanently and totally disabled for his regular line of work".

If witnesses who testify before Federal grand jury July 17th, 1940, only with knowledge on "FRAUD" committed by this defendant on petitioner June 29th, 1934; but also believed your petitioner was disabled as stated, wanted to analyze defendant policy No. 8 611 895 to determine if policy contained a health provision, your petitioner declining to let them (September, 1933) definitely testified to on this fact, no one can, petitioner is sure, convince your Honorable Court petitioner at any time was attempting to "frame" this defendant on the issue of disability benefit payments under policy No. 8 611 895 as the Honorable Circuit Court of Appeals Eighth Circuit states by decision rendered February 24th, 1939. This Honorable Court was evidently so convinced when it wrote decision February 24th, 1939, as mentioned, it refused to write another opinion July 22nd, 1940, and wanted the Marshal to destroy Policy No. 8 611 895.

Your petitioner is convinced that this was why the ancient Roman Democracy (which we copied after 1776) first went into an Empire, then fell. The era preceding it all carries

abundant proof of the type of decisions rendered by its judicial branch of the democracy.

The Federal court, the Eighth Circuit Court of Appeals were both deceived by this defendant.

Your petitioner's purpose here is to hope and see this Honorable Court is not likewise deceived.

Here is positive proof this defendant is dishonest with its policy holders here in Missouri. I promised earlier in this petition to prove this defendant stands before your Honorable Court today with "unclean" hands.

On Page #49, printed copy writ of certiorari filed November 9th, 1940, copy served on defendant, petitioner state banks were using their monthly financial statements to depositors to carry the message "President Roosevelt and the New Deal" were "PACKING" the Supreme Court of the United States: Petitioner wrote one such bank president, resented the use of bank prospectus, also resented some insurance corporations actually telling policy holders, and even writing them the same thing. Petitioner held out to this one bank president possibility of proof which petitioner would attempt to furnish, showed an association known as the Liability Employers Association, Inc., had existed, that a New York Life departmental head was one of its charter members, petitioner believing its main purpose to be to "PACK" the jury boxes in Missouri State courts of Jackson county—greater Kansas City and not a small expanse of territory. That the bank president had not accepted petitioner's offer by November 9th, 1940. Nor has he to date let me state here.

I had the fullest confidence in this defendant when I entered Federal court, November, 1936. I had the same confidence when I came out. (See page #28 second to last paragraph, copy writ of certiorari-amendment.) Petitioner had the fullest confidence in an advertised directorate by this

defendant to work without salary, gladly inviting policy holders to write them for protection.

However, this defendant directorate disillusioned petitioner, disappointed petitioner down to the very core of his personality so petitioner started to do something about it.

He unearthed the so-called Employers Liability Association, Inc., and found a departmental head of the defendant in greater Kansas City to be a charter member.

Petitioner was then positive what the purpose of this association was, insofar as an instrument of the defendant was concerned. At least believed so. But, petitioner could not prove it. Petitioner could, of course, talk about it so let this Honorable Court decide if petitioner talked about it in the right places.

Your petitioner tried hard to have this association and its purpose given wide publicity. Your petitioner went out of his way to talk to Kansas City newspaper representatives. Those petitioner talked to wanted to co-operate apparently but their newspaper changed their minds. Nothing in the way of publicity happened.

On February 10th, 1941, less than thirty days ago something did happen.

Your petitioner had occasion about September 3rd, 1937, when a defendant director wrote petitioner his final letter (see page #28 writ of certiorari-amendment) to try and engage counsel. In writing such counsel at that time petitioner said this in one of his Exhibits. Quote

> "One word of caution. I have investigated this New York Life. One of its departmental heads in greater Kansas City was a charter member to the so-called Employers Liability Association, Inc. My conviction is this association, so far as the New York Life would be concerned, has a set purpose to "PACK" the jury boxes in Missouri State Jackson County Courts. As the New York Life directorate invite me to file suit in court, when so filed look out for a "PACKED" jury.

Don't take this case unless you desire to fight it to the bitter end. You will be fighting three billions of dollars with sixty thousand dollars of it my money. There are over sixty thousand names on the Jackson County court jury wheels, over fifty thousand of those sixty thousand employed by this so-called Employers Liability Ass'n. The New York Life intend to use federal court disagreements with Missouri state established law on disability, did so obtain with my case in federal court, 1936, and are now out to obtain Supreme Court of United States concurrance in such federal court disagreement and then put its two bulls, one with "horns" and one without "horns" back in Missouri state courts, driven out with Missouri state established law back in 1926. In the meantime this Employers Liability Association, Inc., I believe, so far is New York Life is concerned, will take care very nicely of New York Life —policy holders in state courts".

Your petitioner on February 10th, 1941, at last received some help and I hope in time for this Honorable Court.

The Honorable Judge Waltner in Jackson County, Missouri State Court rendered the following decision (quoted in excerpt) February 10th, 1941, on a change of venue case before court. Quote

1) Pronounced the Employers Liability Association, Inc., to be an organized propaganda machine, etc.

2) Writing fictional propaganda tending to spread the belief that many damaged suits are "fake" and "fraud".

3) Privately paying employe-jurors more remuneration than they would receive in legitimate service.

4) Maintaining statistical records of the performance of employe-jurors with the result of coercing verdicts.

5) This Court is convinced of the verity of affidavits which are to the effect that it is likely that a litigant, versus this defendant (Employers Liability Associa-

tion) could not obtain an impartial jury because of the defendant's influence over the inhabitants of Jackson County. Court grants change of venue".

There was but a short mention of this decision in the press. No newspaper front page captions (mention on inside sheets) and no newspaper editorials on editorial sheet.

Writeups on Roosevelt "PACKING" the Supreme Court. Well let me contrast that issue with our leading newspaper here.

Commencing with February, 1937, front page glaring headline captions daily in morning and evening papers for months, the editorial sheet filled daily with editorial write-ups, photographs, etc. It still goes on and is still mentioned. Not, of course, daily.

Not a bank prospectus, not a newspaper, not an Insurance Company writing their agents and policy holders about "PACKING" the jury boxes in Jackson County of Missouri courts.

Your petitioner even told one bank all about it (see page #49 writ of certiorari-amendment) by letter with no result.

Petitioner holds no animosity against the Honorable Federal court of November, 1936, March, 1938 and August 14th, 1939. If this defendant can "frame" over five hundred thousand people in greater Kansas City with a "PACKED" jury box in all Jackson County, State of Missouri, courts since 1935, and for the State court decision to say it is still going on even if courts did dissolve the association, this defendant with its corps of paid political attorneys surrounding every Federal judiciary court in the land can also deceive some of these Federal judiciary members.

Your petitioner's hope is the Federal judiciary will hold a convention similar to Missouri State judges back in 1926, so to speak. At least become agreed on the correct interpretation of the disability clause in an insurance policy, the

"gold mine" for unethical and dishonest insurance where courts listen to their two bulls.

Since 1776 American insurance can write an insurance policy, if it wants to, without ambiguous clauses, charge the premium it must have to be prosperous and the public will gladly pay the price.

I object as your petitioner to dishonest insurance, first influencing a man when young to put his trust in them to protect his family, then legally rob the same man when he is old and to hell with his family.

I charge here that is what this New York Life most deliberately intended to do with its ambiguously phrased policy No. 8 611 895, selling policy in Missouri until Missouri adopted State established law on disability, then getting out of Missouri with policy No. 8 611 895. But, dragging a Missouri policy holder owning such a policy from State to Federal court if he had the audacity to put this defendant in a Missouri State court with the policy as evidence.

No wonder this defendant wanted the Federal court to cite me for contempt of Federal court to appear September 30th, 1940 (see page #16 writ of certiorari-amendment), and have Marshal destroy policy No. 8 611 895 and component parts. This defendant cannot even take a chance I might prove to two other bodies which I am also before aside from Federal judiciary the defendant "fraud" policy No. 8 611 895 and component parts contain.

On page #11, second paragraph, petitioner states in printed copy of writ of certiorari-amendment petitioner advised an attorney he doubted if petitioner could engage an attorney in greater Kansas City to properly handle his case before the Federal judiciary. On September 3rd, 1937, a New York Life director wrote petitioner to take the charge made to the directorate to court (see page #28 writ of certiorari-amendment).

It is to clarify the atmosphere your petitioner shows why such statement was made. Petitioner then suspicioned the defendant, also its directorate, that it would not play "fair" and was convinced petitioner knew why.

There are over three million insurance policy holders in Missouri. This defendant was shooting at this colossal number, and add sixty-five million in the nation and using, already had used the petitioner as the victim. Petitioner had already been legally shot.

Your petitioner had already discovered why.

*To obtain a Federal court disagreement with Missouri State Established Law.* Defendant got it. November 23rd, 1936.

The Supreme Court of the United States then still had to be "framed". Why should petitioner not use word "framed"?

The Circuit Court of Appeals Eighth Circuit write decision February 24th, 1939, and charges the petitioner with "framing" this innocent defendant.

Petitioner here quotes charge made publicly by the Junior Missouri Senator in speaking before the United States Senate and directed directly against the Federal court who tried your petitioner's suit in equity against this defendant charging "Fraud" year 1934: Quote

*Kansas City Star, February 15th, 1938.*

*A Bitter Truman.*

*Quote in excerpt.*

"The federal court at Kansas City is presided over by two as violently partisan judges as ever have sat on a federal bench since the federalistic judges of Jefferson's Administration. They are Merrill E. Otis and Albert L. Reeves.

"Lawyers in Kansas City have been afraid to act as defendant attorneys in these cases because it was in-

timated plainly to them that the federal judges did not consider it the proper thing to do. Lawyers all expect to practice in the federal court. In fact a good friend of mine told me he didn't dare act as a defendant lawyer in these cases because he had important matters pending in Otis' Court".

Your petitioner has remained within the scope in all the foregoing on what is public knowledge. Petitioner never did have any opinion, nor made any expressions anywhere on the above quotation.

That your petitioner has said nothing here petitioner did not say to the Honorable Federal Judge Merrill E. Otis direct when cited for contempt of Federal court, September 30th, 1940, (see page #16 writ of certiorari-amendment) is evidenced by the fact petitioner appeared in Federal court, as ordered, and handed to His Honor his prepared petition from which a great deal of the foregoing petition has been copied here. His Honor accepted petitioner's petition, defendant withdrew his motion and His Honor handed back to petitioner his petition without reading.

The Federal court of 1936 was deceived "framed" by this defendant.

Your petitioner is after this defendant, not any member of the Federal judiciary who have my deepest respect. However, when the Federal judiciary undertakes to protect this defendant, compels petitioner to try by "law" the Federal judiciary rather than this defendant, such members of the Federal judiciary can well handle themselves. They do not require this defendant to advise them petitioner is discourteous to His Honor or that when he does appear before His Honor petitioner failed to wash his hands. Your petitioner assures this Honorable Court his hands are not dirty, but charges here that this defendant's hands to be filthy.

Your petitioner prays this Honorable Court will overrule the lower courts and permit your petitioner to try this defendant on the issues of this case.

MAJOR S. K TOUCEY,
*Petitioner.*

Address #131 West 61st, Street Terrace, Kansas City, Missouri.

(3057)